

1 PILLSBURY WINTHROP SHAW PITTMAN LLP  
2 BRUCE A. ERICSON #76342  
3 DAVID L. ANDERSON #149604  
4 PATRICK S. THOMPSON #160804  
5 JACOB R. SORENSEN #209134  
6 BRIAN J. WONG #226940  
7 50 Fremont Street  
Post Office Box 7880  
8 San Francisco, CA 94120-7880  
Telephone: (415) 983-1000  
9 Facsimile: (415) 983-1200  
10 Email: bruce.ericson@pillsburylaw.com  
11 SIDLEY AUSTIN LLP  
12 DAVID W. CARPENTER (pro hac vice application pending)  
BRADFORD A. BERENSON (pro hac vice application pending)  
13 DAVID L. LAWSON (pro hac vice application pending)  
EDWARD R. McNICHOLAS (pro hac vice application pending)  
14 1501 K Street, N.W.  
Washington, D.C. 20005  
15 Telephone: (202) 736-8010  
Facsimile: (202) 736-8711  
16 Attorneys for Defendants  
17 AT&T CORP. and AT&T INC.

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

21 Plaintiffs,  
22 vs.  
23 AT&T CORP., AT&T INC. and DOES 1-20,  
inclusive,

24 Defendants.

No. C-06-0672-VRW

**MOTION OF DEFENDANT AT&T CORP. TO FILE DOCUMENTS UNDER SEAL**

**[Civ. L.R. 7-11, 79-5]**

Courtroom: 6, 17th Floor  
Judge: Hon. Vaughn R. Walker

Filed concurrently:

1. Declaration of Bruce A. Ericson
2. Proposed Order

1       **NOTICE OF MOTION AND MOTION TO FILE DOCUMENTS UNDER SEAL**

2       TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3           PLEASE TAKE NOTICE that pursuant to Northern District of California Civil  
4       Local Rules 7-11 and 79-5, defendant **AT&T CORP.** (“AT&T”) hereby moves the Court  
5       for an Order allowing it to file under seal the following documents: (1) Motion of  
6       Defendant AT&T Corp. to Compel Return of Confidential Documents; Supporting  
7       Memorandum (the “Confidential Motion”), and (2) the Declaration of James W. Russell in  
8       Support of Motion of Defendant AT&T Corp. to Compel Return of Confidential  
9       Documents (the “Confidential Russell Declaration”). AT&T respectfully submits that good  
10      cause exists for the filing of these documents under seal.

11           This motion is based on the following Memorandum of Points and Authorities, the  
12      Declaration of Bruce A. Ericson in Support of Motion of Defendant AT&T Corp. to File  
13      Documents Under Seal, the documents in the Court file, and the Confidential Motion and  
14      Confidential Russell Declaration.

15           **MEMORANDUM OF POINTS AND AUTHORITIES**

16      **I. INTRODUCTION.**

17           This action arises from plaintiffs’ allegations that AT&T assists the government in  
18      carrying out a surveillance program to prevent terrorist attacks on the United States. In  
19      support of a motion for preliminary injunction that plaintiffs filed on April 5, 2006,  
20      plaintiffs filed under seal the declaration of a former AT&T employee. The employee’s  
21      declaration attaches three documents containing confidential and proprietary information  
22      (the “Confidential Documents”) that he took from AT&T.

23           The Confidential Documents were taken outside of the discovery process. They  
24      contain confidential and proprietary AT&T information. AT&T therefore has filed the  
25      Confidential Motion requesting that the Court order plaintiffs to return the documents and  
26      make no further use of them unless and until they are obtained by proper means. The  
27      Confidential Motion and the Confidential Russell Declaration describe in detail the nature  
28      and content of the Confidential Documents—information that the Court needs to make an

1 informed ruling on the Confidential Motion. But as a consequence, the Confidential  
 2 Motion and the Confidential Russell Declaration contain highly sensitive information that,  
 3 if disclosed, could result in harm to AT&T and to its customers—harm completely  
 4 unrelated to the allegations in plaintiffs' complaint. Putting these documents in the public  
 5 record would undermine the purpose of the Confidential Motion.

6 **II. ARGUMENT.**

7 Northern District Civil Local Rule 79-5(b) provides that counsel seeking to file  
 8 documents under seal may file a motion under Local Rule 7-11 and may lodge with the  
 9 Court documents for which sealing is requested. Civil Local Rule 79-5(a) provides that the  
 10 Court may order documents sealed if they are “privileged or protectable as a trade secret or  
 11 otherwise entitled to protection under the law . . . .” AT&T has lodged the documents that  
 12 are the subject of this motion in the manner provided for in Local Rule 79-5(b). There is  
 13 good cause for keeping the documents under seal.

14 This Court has the power to seal records to protect confidential and proprietary  
 15 business information. Both federal and California law recognize that courts should protect  
 16 trade secrets or other confidential commercial information by reasonable means, and that  
 17 allowing the filing under seal of documents containing such information is one of these  
 18 means. *See* Civil Local Rule 79-5(a); Fed. R. Civ. P. 26(c)(7) and (8) (a court may enter an  
 19 order protecting the confidentiality of “a trade secret or other confidential research,  
 20 development or commercial information,” including a direction that documents or  
 21 information be filed under seal); Cal. Civ. Code§3426.5 (“a court shall preserve the secrecy  
 22 of an alleged trade secret by reasonable means, which may include granting protective  
 23 orders in connection with discovery proceedings, holding in-camera hearings, sealing the  
 24 records of the action, and ordering any person involved in the litigation not to disclose an  
 25 alleged trade secret without prior court approval”).

26 Though the courts recognize a general right to inspect and copy public records and  
 27 documents, including judicial records, the Supreme Court has stated that this right is  
 28 limited. “It is uncontested, however, that the right to inspect and copy judicial records is

1 not absolute. Every court has supervisory power over its own records and files, and access  
 2 has been denied where court files might have become a vehicle for improper purposes.”  
 3 *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). In discussing examples  
 4 of improper purposes, the Court indicated that courts are not to serve as “sources of  
 5 business information that might harm a litigant’s competitive standing.” *Id.* As the Ninth  
 6 Circuit has put it,

7           The law, however, gives district courts broad latitude to grant protective  
 8 orders to prevent disclosure of materials for many types of information,  
 9 including, but not limited to, trade secrets or other confidential research,  
 10 development, or commercial information. *See Fed. R. Civ. P. 26(c)(7).*  
 11 Rule 26(c) authorizes the district court to issue "any order which justice  
 12 requires to protect a party or person from annoyance, embarrassment,  
 13 oppression, or undue burden." The Supreme Court has interpreted this  
 14 language as conferring "broad discretion on the trial court to decide when a  
 15 protective order is appropriate and what degree of protection is required."  
*Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 104 S.Ct. 2199, 81 L.Ed.2d  
 16 17 (1984).

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18           *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

19           The Confidential Documents in this action would, if made public, harm AT&T's  
 20 competitive standing by disclosing proprietary processes and techniques developed through  
 21 investment of substantial AT&T resources. Allowing public access to the Confidential  
 22 Documents would make the Court a “vehicle for improper purposes” in other ways as well.  
 23 As is apparent from the Confidential Russell Declaration, making the Confidential  
 24 Documents public would expose AT&T to a variety of physical and electronic threats,  
 25 including disruption of service, interception of data and theft of AT&T customer  
 26 information. Exposure to these threats would harm both AT&T as well as its customers,  
 27 which include businesses, federal, state and local government, and private individuals like  
 28 the plaintiffs. Declaration of Bruce A. Ericson in Support of Motion to File Documents  
 under Seal ¶5.

29           The Confidential Documents contain detailed non-public information about critical  
 30 communications infrastructure operated by AT&T. *Id.* ¶3. The information contained in  
 31 the Confidential Documents is confidential and proprietary, and has value to AT&T not

1 generally known to the public or AT&T's competitors. *Id.* ¶4. AT&T takes great care in  
2 preserving the confidentiality of the Confidential Documents. *Id.* ¶5. Public disclosure of  
3 the Confidential Documents could create great risk to AT&T's ability to provide services  
4 and carry out its business activities. *Id.* The Confidential Motion and Confidential Russell  
5 Declaration describe the contents of the Confidential Documents in great detail, and putting  
6 them into the public record of this Court would injure AT&T in the same way as making  
7 the Confidential Documents themselves public. *Id.* ¶6.

8 In *Nixon*, the Supreme Court asserted that "the decision as to access is one best left  
9 to the sound discretion of the trial court, a discretion to be exercised in light of the relevant  
10 facts and circumstances of the particular case." *Nixon*, 435 U.S. at 599. In *Phillips*, the  
11 Ninth Circuit said much the same thing. *Phillips*, 307 F.3d at 1211. The relevant facts and  
12 circumstances of this case argue for sealing the Confidential Motion and the Confidential  
13 Russell Declaration. Doing so will protect the interests of both AT&T and those that rely  
14 on its services.

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### 1     III.     CONCLUSION.

2 For the foregoing reasons, AT&T submits that good cause exists for the filing of the  
3 Confidential Motion and the Confidential Russell Declaration under seal and respectfully  
4 requests that the Court so order.

5 Dated: April 10, 2006.

PILLSBURY WINTHROP SHAW PITTMAN LLP  
BRUCE A. ERICSON  
DAVID L. ANDERSON  
PATRICK S. THOMPSON  
JACOB R. SORENSEN  
BRIAN J. WONG  
50 Fremont Street  
Post Office Box 7880  
San Francisco, CA 94120-7880

SIDLEY AUSTIN LLP  
DAVID W. CARPENTER  
BRADFORD A. BERENSON  
DAVID L. LAWSON  
EDWARD R. McNICHOLAS  
1501 K Street, N.W.  
Washington, D.C. 20005

By \_\_\_\_\_ /s/ Bruce A. Ericson  
Bruce A. Ericson

Attorneys for Defendants  
AT&T CORP. and AT&T INC.